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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
HYDRO LICENSING STATUS WORKSHOP 2005 ) Docket No.  
 ) AD05-015-000  
Commission Meeting Room  
Federal Energy Regulatory  
Commission  
888 First Street NE  
Washington, DC  
Thursday, December 1, 2005  
JOSEPH T. KELLIHER, Chairman  
SUEDEEN G. KELLY, Commissioner  
Empaneled Staff:  
Robert J. Cupina  
John S. Katz  
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John M. Robinson  
Participants by video conference

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## P R O C E E D I N G S

(10:05 a.m.)

CHAIRMAN KELLIHER: Good morning, sorry for the delay. This is the fifth annual Hydro Licensing Status Workshop, which will focus on 17 license applications pending with the Commission for three years or more. And I'm pleased to report that through the efforts of all involved, we have acted on 9 of the 22 projects that were on last year's list of projects, that had also been pending for three years or longer.

And I want to express my thanks to the Commission Staff, to other agencies, federal and state agencies, and others that helped remove obstacles to make that possible. And particularly I want to thank the Pacific Northwest National Marine Fishery Service under the leadership of Bob Lohm, for their completion of Biological Opinions that allowed us to take action on a number of projects.

Now since last year's workshop, we've added only four new projects that have been pending before the Commission for three years or more. And at today's workshop, we'll be examining the unresolved issues associated with 17 hydro cases. Our objective is to determine the best course of action to resolve or remove obstacles to final Commission action.

And as in past years, action on water quality,

1       quality certification continues to be the major holdup to  
2       Commission action. And if you look at these 17 projects  
3       that we're examining today, 12 of the 17 have been delayed  
4       due to water quality certification problems. In the past,  
5       water qualification and the Endangered Species Act issues  
6       have been the major causes of delays in action on hydro  
7       cases.

8               This year, the Endangered Species Act, in part  
9       because of the action that I mentioned above, has not  
10      contributed to many of these projects; and only 2 of the 17  
11      have Endangered Species Act issues; 12 have Clean Water Act  
12      issues.

13             Now before we start discussing the 17 cases, I  
14      also want to state that I'm aware that in addition to the  
15      cases being discussed today, all of you are putting a great  
16      deal of effort into the roughly 100 projects undergoing  
17      license or re-licensing at the Commission, in either pre-  
18      filing or post-filing phases.

19             Now through these efforts, I know there are  
20      licenses issued well in advance of the three year period,  
21      and that many are issued within our ultimate goal of less  
22      than two years.

23             I also want to report on the progress of the  
24      integrated licensing process. During the two year  
25      transition period, about one-third of the projects that were

1 eligible to use this new process volunteered to do so. And  
2 of the seven re-licenses, six have approved study plans and  
3 are in the process of completing their first year of  
4 studies. With only one formal dispute resolution, most  
5 study plan disputes were resolved during the informal phase  
6 of the ILP. And every indication to date assures us that  
7 the ILP is headed towards achieving the goal of reduced time  
8 and cost of licensing, while ensuring appropriate resource  
9 protection.

10 I'm hopeful that, as a result of our process  
11 today on these 17 projects, we will be able to identify ways  
12 to facilitate the completion of the records so that the  
13 Commission can take final action.

14 And I want to commend Pat Wood for starting these  
15 workshops. This is the fifth workshop; one reason we are  
16 continuing to do them is that they've proved effective in  
17 the past. They've helped resolve some of the disputes that  
18 have caused delays in acting on some of these license  
19 proceedings.

20 Now our goal here today is to continue to build  
21 on the successes that we've enjoyed over the past years, and  
22 to explore new ways the Commission can help bring resolution  
23 to some of the outstanding issues presented today.

24 And I want to ask my colleague if you have any  
25 comments you'd like to make.

1 COMMISSIONER KELLY: Thank you, Joe.

2 As I understand it, the cases that are pending  
3 today and have been pending for a while on these dockets  
4 have to do with resolution of environmental issues;  
5 specifically as Joe mentioned, water quality and endangered  
6 species issues. In fact, as I count them up, there are only  
7 three of the 17 that don't involve environmental issues.

8 I understand that it sometimes takes time to work  
9 out the solution to these issues; but I want to underscore  
10 the importance of moving quickly, not just so that we can  
11 cross it off as a license issued, but because in most of  
12 these cases, the license to be issued provides more  
13 environmental protection than the existing license. Until  
14 we can get the new license issued, the environmental  
15 protections in the new license cannot be implemented.

16 So I appreciate the opportunity to talk about  
17 these cases, and I hope that this is a forum where we can  
18 resolve some issues and move ahead with issuing these  
19 licenses. Thanks.

20 CHAIRMAN KELLIHER: Thanks.

21 Now I'll to John Katz, who will explain the  
22 ground rules of the workshop.

23 Ground Rules

24 MR. KATZ: Thank you, Mr. Chairman, Commissioner  
25 Kelly. Welcome back for our latest round of workshop

1 efforts. We have refined the ground rules down to the point  
2 where there are only a couple of things I need to remind  
3 folks of.

4 First is that these proceedings are being  
5 transcribed by the court reporter. Therefore, anyone who  
6 speaks should give their name and what group they're  
7 affiliated with, and spell your name if necessary so that  
8 the court reporter can get that all down. For those who are  
9 with us in the Commission Meeting Room, folks will pass  
10 microphones to you if you want to speak; otherwise, again,  
11 it will be difficult for the court reporter to hear your  
12 words, as well as for the rest of us. For those of you out  
13 there by the magic of videoconference, again please speak  
14 into the mics and identify yourselves; and as I reminded you  
15 earlier you may want to mute your mics when you are not,  
16 when no one in the room with you is speaking, because  
17 otherwise we'll hear what you're saying here and it may  
18 disrupt the proceedings.

19 The substantive ground rule that we have is  
20 fairly simple: We are here to discuss procedural roadblocks  
21 to the resolution of cases, not substantive road blocks. So  
22 to the extent that folks want to talk about how we can move  
23 forward with ESA consultation or with completion of a  
24 programmatic agreement or issuance by the state of a water  
25 quality certification, that is appropriate to be discussed



1       here.

2                   If folks feel that a proceeding has not been  
3 wrapped up because gosh darn it, the license is just  
4 unreasonable and won't accept their proposals; or  
5 contrarily, the resource agencies are being unreasonable in  
6 posing harsh and ridiculous conditions. That is not what  
7 we're here to discuss. Those substantive matters are to be  
8 discussed in the ongoing proceedings on the record for the  
9 individual cases, and are not the appropriate subject matter  
10 for this discussion. If we do it, as some of you know, I  
11 will have to politely but firmly tell you that we can't  
12 handle those matters here, and that we'll need to deal with  
13 them in the individual cases.

14                  The way we're going to proceed is that we're  
15 going to start discussing projects in the East; Mark  
16 Pawlowski will go thru those, and we will then turn to those  
17 in the West. Out of courtesy to the folks in California, we  
18 will not be starting -- and Washington State as well -- we  
19 will not be starting the Western portion of the program  
20 until 11:30 as a time certain, so should we finish the East  
21 before then, we'll probably take a brief break.

22                  With that, I will turn it over to Mark Pawlowski  
23 to lead things off.

24       Overview of Previous Workshops and Pending Applications

25                  MR. PAWLOWSKI: Thank you, John.

1 I'd like to begin by giving a brief overview of  
2 where we've been in the past. In the first licensing status  
3 workshop that was held on December 10 and 11 of 2001, at that  
4 time there were 51 projects that had been at the Commission  
5 for five years or more.

6 As a result of the annual workshops, Staff, state  
7 and federal agencies, have committed to work together to  
8 remove obstacles in an effort to resolve issues surrounding  
9 some of the oldest hydro licensing cases at the Commission.  
10 These efforts and others are helping us make progress at  
11 reducing the number of older cases.

12 For the 2002 and 2003 workshops, the number of  
13 cases five or more years old had been paired down to 37 and  
14 21 projects respectively.

15 Beginning in 2004, the number of older cases had  
16 been reduced so much that the 2004 focused on 22 projects  
17 that remained at the Commission for more than three years.  
18 At today's workshop, we are addressing 17 projects where  
19 license applications have been pending at the Commission for  
20 three years or more.

21 The projects are located in five states, and we  
22 will be presenting the projects, by state, beginning in the  
23 East and ending in the West.

#### 24 Project Specific Discussions

25 Today we will be addressing four projects in the

1 State of Maine, beginning with the Gulf Island-Deer Rip  
2 Project. The 31 megawatts Gulf Island-Deer Rip Project is  
3 located on the Androscoggin River in Maine. The project is  
4 owned by FPL Main Hydro; the re-license application was  
5 filed in December of 1991.

6 Since the last workshop in December of 2004, the  
7 Maine Department of Environmental Protection issued a water  
8 quality certificate for the project on September 21, 2005.  
9 However, the water quality certification was based on there  
10 being no capacity increase at the Gulf Island development,  
11 as was proposed in the 1991 application.

12 In October of 2005, Staff asked FPL-Maine for  
13 clarification regarding its proposal to increase the  
14 capacity at the Gulf Island development by replacing two of  
15 the turbine runners. In November, FPL-Maine withdrew its  
16 proposal to replace the two turbine runners.

17 Our 1996 environmental impact statement had  
18 previously concluded that re-licensing the Gulf Island-Deer  
19 Rip Project would not affect any federally-threatened or  
20 endangered species or their habits. In September of 2005,  
21 Staff asked the U.S. Fish and Wildlife Service for an  
22 updated information on federally-threatened and endangered  
23 species in the vicinity of the project.

24 In October, the Fish and Wildlife Service  
25 responded that a breeding pair of bald eagles had taken up

1 residence on the Gulf Island pond, and used the pond to  
2 forage.

3 In November, Staff issued it's Biological  
4 Assessment of the effects on bald eagles from licensing the  
5 project, and asked that the U.S. Fish and Wildlife Service  
6 concur with Staff's conclusion that licensing the project,  
7 as recommended in the '96 EIS, and in its Biological  
8 Assessment, is not likely to affect the bald eagle.

9 We are currently waiting for concurrence from the  
10 Fish and Wildlife Service on staff's findings for the bald  
11 eagle. That is due on December 5, 2005.

12 Do we have anyone from Maine Fish and Wildlife  
13 Service who could provide us a timetable for their  
14 concurrence and whether we will get that by the 5th?

15 MR. TITLER: Andrew Titler, Department of  
16 Interior Solicitor's Office.

17 As far as I know, I see no reason why the Service  
18 will not be timely with their letter.

19 MR. PAWLOWSKI: Okay, thank you.

20 Are there any other questions or comments  
21 regarding this project before we proceed?

22 CHAIRMAN KELLIHER: Mark, when we get that  
23 concurrence, we'd be in a position to act then?

24 MR. PAWLOWSKI: Yes.

25 CHAIRMAN KELLIHER: Great.

1           MR. PAWLOWSKI: The next two projects are the 1.0  
2 megawatts Howland Project and the 7.6 megawatt Great Works  
3 project. These projects are located on the Piscataquis and  
4 Penobscot River, respectively. The Howland project is owned  
5 by People, Maine, while the Great Works project is owned by  
6 People Great Works.

7           The re-license applications for the Howland  
8 project and Great Works project were filed on September 1998  
9 and March 2000, respectively.

10           In June of 2004, a settlement agreement was filed  
11 at the Commission, affecting nine existing projects in the  
12 Penobscot River Basin. The settlement provides a five year  
13 period for the Lower Penobscot River Restoration Trust, to  
14 raise funds for the purchase of the two projects, which  
15 would then be transferred to the trust, retired, and studied  
16 for removal.

17           The Commission granted the settlement parties'  
18 request for suspension of the licensing process until June  
19 of 2009, and required semiannual progress reports. The most  
20 recent progress report was filed on October, 2005.

21           In the report, the parties summarized their  
22 fund-raising activities and reported on the implementation  
23 of other aspects of their agreement, including fisheries  
24 management planning and changes at three other projects in  
25 the river basin.

1                   If there's anyone from the settlement parties  
2 present, is there anything further that any stakeholder can  
3 add?

4                   I understand Dana Murch with the DEP is on the  
5 phone?

6                   MR. MURCH: I am. Good morning.

7                   MR. PAWLOWSKI: Dana, can you give us an update?

8                   MR. MURCH: I'm not a signatory to the  
9 settlement, but from the DEP's standpoint, the parties are  
10 still working on fund-raising, and I assume studies  
11 potentially related to dam removal. The DEP has an  
12 agreement with the project owners to have the requests for  
13 water quality certification withdrawn and re-filed every 12  
14 months, so that there's still a pending request for  
15 certification in the event that the projects are not  
16 purchased under the settlement, and that re-licensing goes  
17 forward.

18                   MR. PAWLOWSKI: Okay, thank you.

19                   Someone from the audience?

20                   MR. POE: I'm Dave Poe, counsel for PPL-Maine and  
21 for PPL-Great Works. I'm with LeBoeuf, Lamb, Greene &  
22 MacRae.

23                   We submitted the update on October 20, I believe,  
24 and since that time I think efforts have continued to  
25 implement the settlement. As far as I know, there are no

1       impediments or problems at this point.

2               MR. PAWLOWSKI: Thank you.

3               Any others?

4               Okay, we'll now be moving on -- oh.

5               MR. DUNLAP: Mr. Chairman, and Mark. This is  
6       Frank Dunlap with FPL Energy. If you're finished the  
7       Howland ones, we would like to take a moment and return to  
8       the Gulf Island Project. We apologize; we didn't realize  
9       you were going to get through it quite so quickly.

10              One thing that's important to note there --

11              CHAIRMAN KELLIHER: Excuse me, I just had one  
12       question on Howland, then we're done, then we can go back.

13              MR. DUNLAP: Certainly.

14              CHAIRMAN KELLIHER: How much money is needed to  
15       be raised to decommission?

16              MR. POE: I'm not sure of the exact figure. The  
17       number that comes to my mind is --

18              CHAIRMAN KELLIHER: And it is Mr. Poe now?

19              MR. POE: Off the top of my head, Mr. Chairman, I  
20       --

21              CHAIRMAN KELLIHER: I'm just curious how much  
22       progress has been made.

23              Yes, sir.

24              MR. TITLER: Andrew Titler again, Department of  
25       Interior.

1           The purchase price is in the vicinity of  
2     \$25 million. I'm not privy to their fund-raising efforts; I  
3     don't know how successful the NGOs have been in raising the  
4     necessary funds.

5           CHAIRMAN KELLIHER: They gave some summary of  
6     their fund-raising activities in October, but we don't know  
7     what the summary concluded or provided?

8           MR. DEAN: This is Tom Dean. And according to  
9     their October 2005 submittal, they've raised about or  
10    appropriated around \$3 million plus, of the \$25 million.

11          CHAIRMAN KELLIHER: Do they have a plan? Are  
12    they going to raise the 25 by June of 2009, or show in  
13    advance of that?

14          MR. DEAN: According to their update, they've  
15    hired a professional fund-raising campaign with individuals  
16    who have expertise in fund-raising. So that's their hope,  
17    is to continue raising funds.

18          MR. PAWLOWSKI: Okay. That's all I had.

19          CHAIRMAN KELLIHER: So do you want to go back to  
20    Gulf Island?

21          MR. DUNLAP: Yes, thank you, Mr. Chair, and Mark.

22                 We just wanted to take a moment and go back to  
23    Gulf Island and review an important point; and that is that  
24    on the 401 certification, although it has been issued, and  
25    theoretically the Commission would be free to process from



1 here, we want to note that there's been 14 appeals on this  
2 and related metal discharge permits on the Androscoggin  
3 River. These are all tied closely by common water quality  
4 interests and concerns; and the BEP, Board of Environmental  
5 Protection in Maine, is in the process of trying to figure  
6 out how to process these appeals, including the appeal on  
7 our water quality certification.

8 So it is in no way a given or a final situation  
9 on the 401 cert; it's up for question. In fact, the BEP is  
10 considering reopening some of the metal discharge permits.  
11 So it's a very difficult and complicated process, and we  
12 believe it's probably not appropriate to process the license  
13 at this point until the water quality cert issues are indeed  
14 finalized.

15 We've submitted this in considerably more detail  
16 in our October 7th letter to the Exhibit.

17 COMMISSIONER KELLY: What is your earliest  
18 estimate of getting that permit?

19 MR. DUNLAP: I believe that Dana can help address  
20 this; Dana Murch from DEP is on the call. What I would  
21 anticipate would be well into next year before any of these  
22 issues are resolved on the appeals.

23 MR. MURCH: This is Dana Murch with the Main  
24 Department of Environmental Protection.

25 It's the Maine Department's position that our

1 water quality certification is final agency action; it has  
2 been appealed, but we stand by our decision, we urge the  
3 Commission, as it has in other similar cases, to issue a  
4 license as it sees fit.

5 MR. KATZ: Right, this is where we're getting  
6 pretty close to the substance of a contested issue, and the  
7 Commission indeed has the pleadings and will address those  
8 at such time as otherwise prepared to move forward.

9 COMMISSIONER KELLY: Thanks, John.

10 Dana, was it appealed to the courts?

11 MR. MURCH: Yes.

12 COMMISSIONER KELLY: Or to the DEP?

13 MR. MURCH: This is an administrative appeal to  
14 the Board of Environmental Protection. There have been  
15 three appeals of the 401.

16 COMMISSIONER KELLY: And are the permits stayed  
17 pending appeal?

18 MR. MURCH: They are not.

19 COMMISSIONER KELLY: Okay. Thank you.

20 MR. PAWLOWSKI: Thank you. Are there any other  
21 questions or comments regarding either the Gulf Island-Deer  
22 Rip Project or the Howland/Great Works projects?

23 Okay. We'd like to proceed to the Eel Weir  
24 project. The 1.8 megawatt project is new to the list. The  
25 project is located on the Presumpscot River in Maine, and it

1 is owned by S.D. Warren Company.

2 The re-license application for the Eel Weir  
3 project was filed in March of 2002. After two rounds of  
4 additional information requests and reviewing a large number  
5 of substantive comments from the public, staff issued its  
6 draft environmental assessment in July of 2005, and  
7 conducted a public meeting to receive comments on the EA in  
8 August of 2005.

9 At a 10J meeting to resolve inconsistencies  
10 between the Federal Power Act and federal and state Fish and  
11 Wildlife recommendations, a meeting was held in September of  
12 2005. I'm pleased to report that the final Environmental  
13 Assessment was issued November 29 of this year. We are  
14 currently waiting for a water quality certificate from the  
15 Maine Department of Environmental Protection.

16 Dana, do you anticipate being able to issue a  
17 water quality certificate by the current due date, in  
18 February of 2006?

19 MR. MURCH: Way to put me on the spot there,  
20 Mark.

21 (Laughter)

22 MR. PAWLOWSKI: Sorry, Dana.

23 MR. MURCH: I do feel like I've lived with this  
24 project for 15 years and not the three that it's been  
25 pending for re-licensing.

1           It's highly unlikely, for two reasons. One, as a  
2 practical matter, I'm a staff of one and have other higher  
3 priorities, unfortunately; procedural matters that need to  
4 be dealt with in the next several months that would likely  
5 make it impossible to have the time to get a 401 draft and  
6 final issued before February.

7           In that event, we will request that S.D. Warren  
8 withdraw and re-file its water quality cert application,  
9 which S.D. Warren has been willing to do in the past.

10          The second reason and perhaps the more salient  
11 one is that this project is owned S.D. Warren on the  
12 Presumpscot River in Maine. As I'm sure everyone knows,  
13 there's a case pending before the United States Supreme  
14 Court brought by S.D. Warren challenging the DEP's authority  
15 to issue water quality certification for re-licensing of its  
16 existing hydro power projects downstream from Eel Weir on  
17 the Presumpscot River.

18          I anticipate that any decision, therefore, that  
19 the DEP makes issuing a certification for Eel Weir would  
20 simply be appealed by S.D. Warren until such time as there's  
21 a decision from the U.S. Supreme Court. We're not exactly  
22 sure how much sense it make to go through that process of  
23 issuing prior to the Supreme Court decision; but we're  
24 certainly still considering that and considering our  
25 options.

1                   And in any event, I would anticipate having  
2                   issued a final water quality certification before next  
3                   year's update meeting I December.

4                   MR. KATZ: We do appreciate the significance of  
5                   the Supreme Court case, Dan -- this is John Katz -- but I  
6                   would say that other states could also take the position  
7                   that that case, the outcome of that case could affect their  
8                   401 certification authorities, and I think, I speak for  
9                   staff here at least, that we sincerely hope that the states  
10                  will not take the pendency of that case as a reason to not  
11                  proceed with their Section 401 responsibilities, and find  
12                  out later what the Supreme Court has to say.

13                  MS. MILES: Dana, this is Ann Miles. I wanted to  
14                  ask one other question. Do you have everything you need to  
15                  move forward with the water quality certification so it's  
16                  just a question of processing?

17                  MR. MURCH: To my knowledge yes, I do have  
18                  everything I need.

19                  MS. MILES: Thank you.

20                  MR. MURCH: In fact, more than everything I need.

21

22                  (Laughter)

23                  MR. PAWLOWSKI: Thank you, Dana.

24                  MR. MURCH: You're welcome.

25                  MR. PAWLOWSKI: Are there any other questions or

1        comments regarding the Eel Weir project before we move on?

2                MS. SKANCKE:    This is Nancy Skancke with GKRSE  
3        representing S.D. Warren in this case, and I don't represent  
4        S.D. Warren in the Supreme Court case, so I will set that  
5        aside.

6                But just to let you know, we just got the FEA,  
7        and so we are still reading through it, and we're looking  
8        also to see what happens on the 401.

9                MR. PAWLOWSKI:    Thank you, Nancy.

10               MR. TITLER:    Andrew Titler with Interior.    We've  
11        also just gotten the FEA, and there were a number of 10J  
12        disputes which at the end of the resolution meeting were  
13        supposed to be resolved in one way or another in the form of  
14        the FEA; and so we will be looking fairly carefully to just  
15        make sure that those things actually have been resolved to  
16        the Service's satisfaction.    We haven't done it yet.

17               MR. PAWLOWSKI:    Thank you, Andrew.

18               Any other questions or comments?

19               Okay, our next project is in the State of  
20        Vermont.    It's the 1.8 megawatt Carver Falls project,  
21        located on the Poultney River in New York and Vermont.    The  
22        unlicensed operating project is owned by Central Vermont  
23        Public Service Corporation.    The license application was  
24        filed in April of 1994.

25               Since the December 2004 workshop, Central Vermont

1 anticipated conducting an aesthetic flow study requested by  
2 the Vermont Agency of Natural Resources in January of 2005.  
3 But because of river flow conditions, the study was  
4 rescheduled for the fall of 2005.

5 In March 2005, Central Vermont withdrew and re-  
6 filed its request for water quality certificate from the  
7 Vermont Agency of Natural Resources. Currently we are  
8 awaiting a water quality certificate from the Vermont  
9 agency.

10 I understand we have Mike Scarzello on the line.  
11 Mike, are you there?

12 MR. SCARZELLO: Yes, I am. Good morning.

13 MR. PAWLOWSKI: Hi, Mike. Was Central Vermont  
14 able to conduct the requested aesthetic flow study?

15 MR. SCARZELLO: Unfortunately, not at this time.  
16 Several attempts have been made to wrap up the field work,  
17 and it's been feast or famine in Vermont. We've gone  
18 literally from a dry summer to an extremely wet fall  
19 condition, and we've set up on about a half a dozen  
20 occasions the day before, actually meeting with agency folks  
21 on site, transect work, etc. And we've either had too  
22 little flow or too much flow to finish the field work  
23 properly.

24 MR. PAWLOWSKI: Thank you. Do you have a  
25 schedule in place for being able to complete that, or?

1                   MR. SCARZELLO: There's a small window remaining  
2                   in the season, winter is quickly approaching here, and we  
3                   want to finish the field work safely. If there's not a lot  
4                   of snow and ice in the field, in the bypass where we need to  
5                   gain access, we'll check schedule with agency folks and  
6                   folks on this end, and see if we can pull something together  
7                   this month. Otherwise, we hope to finish work early next  
8                   year.

9                   MR. PAWLOWSKI: Okay. I also understand we have  
10                  Jeff Cueto, with the Vermont Agency of Natural Resources.

11                  Jeff, are you there?

12                  MR. CUETO: Yes, I am.

13                  MR. PAWLOWSKI: Jeff, is there anything you can  
14                  add to what Mike said?

15                  MR. CUETO: Yes, I'd add a couple of things.  
16                  Just for clarity, we did not ask for a new study; this is a  
17                  refinement of a study that was done several years ago as  
18                  part of the initial application. So it's a matter of  
19                  refining if we can kind of come in with something in between  
20                  in terms of a compromise.

21                  And the second part is, if we can't complete the  
22                  study this month, and it is certainly getting late, one  
23                  option would be to issue a certification with a reopener on  
24                  this particular issue of bypass flows, just so we could move  
25                  forward on the re-licensing.



1 MR. PAWLOWSKI: Okay, thank you, Jeff.

2 COMMISSIONER KELLY: It sounded to me like the  
3 Vermont Agency of Natural Resources and the Central Vermont  
4 Public Service Corporation needs to coordinate to undertake  
5 this flow study. Is my understanding correct there?

6 MR. CUETO: Yes, this is Jeff Cueto. The Agency  
7 is pretty much on call; so CV is monitoring flows and  
8 conditions down there to wait until the timing is right, and  
9 then we'll be pretty much out there doing the work.

10 COMMISSIONER KELLY: That sounds great. Thank  
11 you for your vigilance.

12 MR. PAWLOWSKI: Any other comments or questions?

13 Seeing none, now I'd like to turn to the 2.2  
14 megawatt Silver Lake Project, also located in Vermont on  
15 Sucker Brook. The unlicensed operating project is owned by  
16 Central Vermont Public Service Corporation, and the license  
17 application was filed in May of 1994.

18 Since the 2004 workshop, Central Vermont withdrew  
19 and re-filed its request for water quality certification  
20 from the Vermont Agency in March of 2005. Currently, we  
21 are waiting for a water quality certificate from the Vermont  
22 agency.

23 Jeff, are you there?

24 MR. CUETO: Yes, I'm still here.

25 MR. PAWLOWSKI: Are you on target to issue a

1 water quality certificate by March 2006?

2 MR. CUETO: I think the issues remain outstanding  
3 that were discussed in the last workshop. There are some  
4 duties that need to be completed by our Fish and Wildlife  
5 department here in the Agency, and then there are also some  
6 duties related to the management of Sugar Hill Reservoir  
7 that CV has to complete in terms of proposing a water level  
8 management scheme for Sugar Hill Reservoir.

9 I think last year we had discussed that one of  
10 the problems was related to the emergency spillway at that  
11 dam, and I don't know if those issues have been resolved or  
12 not. I notice that there have been some recent FERC  
13 bulletin Board items that have come out related to the  
14 spillway; so maybe Mike could brief us on that.

15 MR. SCARZELLO: Sure. I'm Mike Scarzello at  
16 CVPS.

17 I will remind the Commission and the State that  
18 last year we did supply to the Commission all the  
19 outstanding issues relative to Silver Lake as well as Carver  
20 Falls, action item responsibilities and a tentative schedule  
21 for completing those. And as Jeff has mentioned, two of  
22 those open items at Silver Lake relate ANR or Fish and  
23 Wildlife responses on open items.

24 Another open item that CV is still grappling with  
25 is, at the Agency's request, going back to the 1998 draft

1 water quality cert that's pending, reviewing that, and  
2 basically remodeling the hydrologic effects of the potential  
3 to surcharge the reservoir going to an uncontrolled spilled  
4 mode over the emergency spillway. It's been a difficult  
5 exercise; we still have some concerns about it; we do wish  
6 to sit with the State and try and resolve these ongoing  
7 concerns from a dam operating safety standpoint.

8 And as I had mentioned in my report to the  
9 Commission last year, CV is interested and the ANR is  
10 willing to discuss the two open projects in the context of  
11 one settlement dialogue. And unfortunately, not being able  
12 to complete the flow demonstration work out at Carver Falls  
13 has pretty much prevented out ability to take the next steps  
14 on trying to close the open issues for both of these  
15 projects, again in the context of one settlement dialogue.

16 MR. PAWLOWSKI: Thank you, Mike.

17 Are there any barriers to completing this work  
18 that staff can help you transcend?

19 MR. SCARZELLO: I'm not sure. And I think Jeff  
20 and I were basically in the same position last year. What I  
21 would first like try is completion of the field work at  
22 Carver's, bring all of the information together in one  
23 agency and utility meeting; hopefully come to a mutual  
24 settlement that involves both projects, and try that first.  
25 And I know we expressed that to the Commission last year;

1       and again it's just been basically whether that has  
2       prevented us from moving forward on that process.

3               MR. PAWLOWSKI: Thank you, Mike.

4               Are there any other questions or comments related  
5       to the Silver Lake project?

6               COMMISSIONER KELLY: I have another.

7               Jeff, you said on Carver that you were  
8       considering going ahead and issuing the water quality  
9       certification with an opening for the issue that you would  
10      like some more information on.

11              Is it possible to do the same thing here at  
12      Silver Lake?

13              MR. CUETO: I think the issues at Silver Lake are  
14      too fundamental with respect to the operation of the  
15      project. I think it's something we can do with Carver  
16      Falls, but Sugar Hill and Silver Lake are a little bit too  
17      complicated, and I think they need to be addressed in the  
18      original 401. That's something we can't deal with  
19      subsequently.

20              COMMISSIONER KELLY: Okay, one other possibility  
21      I'm wondering about, where there are -- and the issue is  
22      really be you and the licensee in this case, because the  
23      FERC staff believes it has adequate information to move  
24      forward; but there are situations where our dispute  
25      resolution service has got involved to sort of help things

1       along, because we obviously do have an interest in moving  
2       this license along.

3               Is that something where it might be possible for  
4       them to work with you and set a more definitive schedule so  
5       that we can see some progress by next year?

6               MR. CUETO: This is Jeff Cueto. It's certainly  
7       an offer we can entertain; it's an offer that FERC makes  
8       each year, and we appreciate. We haven't -- I think we,  
9       certainly as a state we want to move forward on both  
10      projects. I'm concerned about linking the two in a single  
11      negotiation, as the slower project will basically impede the  
12      licensing of the other project.

13              I think we have to light a fire under our Fish  
14      and Wildlife Department (A), and I have been working on that  
15      and I'm making substantial progress; but if we can have a  
16      proposal on how to manage water levels at Sugar Hill  
17      Reservoir, which again is tied into the competency of the  
18      emergency spillway, I think we might be able to move things  
19      forward this winter, if we can work on this.

20              Did I answer your question?

21              MR. ROBINSON: This is Mark Robinson. Ann nodded  
22      her head 'yes.' But I have another question.

23              I don't understand the linkage between the flow  
24      studies at Carver with the emergency spillway conditions at  
25      Silver. I can't imagine that flows that are being discussed

1       for aesthetic purposes would somehow enter into the  
2       discussion about whether or not the emergency spillway is  
3       adequate at the Silver Lake project.

4                Could you explain that, please?   Going to why  
5       you're trying to link these two projects.

6                MR. SCARZELLO:   Maybe I could, Mark.   It's Mike  
7       Scarzello from CVPS.

8                Given the size of both of these projects and the  
9       draft water quality cert positions put forth by the State of  
10      Vermont, it has truly challenged the operation, viability,  
11      economic viability of both these projects.   CV expressed,  
12      when we last met with the State during initial sediment  
13      discussions, which was March 2004, the interest in trying to  
14      wrap these up under one settlement dialogue to both parties'  
15      mutual satisfaction.   What we can try to resolve at one  
16      project, hopefully there was some room for give and take at  
17      the other project, and vice-versa.

18               And that's simply what we're trying to do is, try  
19      and put both of these projects to bed under one settlement.

20               MR. ROBINSON:   I can appreciate your desire to do  
21      that, but you made some comment about the studies being  
22      necessary before you could move forward on the spillway,  
23      concerns with Silver Lake.   That's more of an economic  
24      concern as opposed to a technical concern with the spillway  
25      adequacy, then.

1                   I'll be more than happy to have our dam safety  
2 folks join you all on the adequacy of that spillway and  
3 whether or not the flow concerns have any relationship to  
4 it.

5                   MR. SCARZELLO: They already are. We've  
6 conducted a potential failure mode analysis --

7                   MR. ROBINSON: Have they looked at that linkage  
8 that you mentioned about the flows at Carver?

9                   MR. SCARZELLO: No, because Silver Lake is a  
10 stand-alone project; it's a high hazard dam in a different  
11 part of Vermont.

12                  MR. ROBINSON: So there is no technical linkage  
13 between those two points; it's just a matter of your  
14 economics for the two projects?

15                  MR. SCARZELLO: That's correct.

16                  MR. ROBINSON: Okay. Thank you.

17                  MR. PAWLOWSKI: Thank you.

18                  Are there any other questions or comments  
19 regarding the Silver Lake project?

20                  Seeing none, I'd like to turn to our final  
21 project in Vermont, the 5.5 megawatt Waterbury project is  
22 located on the Little River. The project is owned by Green  
23 Mountain Power Corporation. The re-license application was  
24 filed in August of 1999.

25                  Since the last workshop, Staff met with the

1 stakeholders in January 2005 to attempt to resolve  
2 inconsistencies between the federal and state Fish and  
3 Wildlife recommendations, and the Federal Power Act.

4 At the January meeting Staff agreed, based on the  
5 comments that we had received, to conduct additional  
6 analysis on reservoir storage capacity and flooding around  
7 the reservoir and downstream in the Little River.

8 In June of 2005, Staff met again with the  
9 stakeholders to discuss the results of its additional  
10 analysis. And in August of 2005, Staff issued a final  
11 environmental assessment. In September 2005 Green Mountain  
12 Power withdrew and re-filed its request to the Vermont  
13 agency for water quality certification; and currently we are  
14 waiting for a Vermont water quality certificate.

15 Jeff, are you there?

16 MR. CUETO: Yes, I am.

17 MR. PAWLOWSKI: Jeff, are you on track to be able  
18 to issue a water quality certificate prior to the current  
19 due date of September 2006?

20 MR. CUETO: September 2006 seems a long ways  
21 away. I would certainly hope we can do it by then. We're  
22 trying to establish a process that will get us there  
23 certainly by September 2006 if not earlier. There of course  
24 is a significant issue at Waterbury reservoir, as there are  
25 attorney the other two projects that we just discussed. The



1 management in our agency needs to decide on how to manage  
2 Waterbury reservoir, which is a flood control reservoir  
3 where we own the dam. We have to decide whether or not the  
4 winter draw-down must continue for flood protection  
5 purposes.

6 And that was something that certainly has had a  
7 lot of discussion, a lot of analysis over the last year. I  
8 think we have a much better understanding than we did a year  
9 ago relative to what, if any flood benefits there are  
10 attributable to this winter draw-down. And our process  
11 initial step is to try to get the decision-makers in our  
12 agency to vote one way or another, basically, on the winter  
13 draw-down, and then we can move forward with the process.

14 MR. PAWLOWSKI: Well, we certainly look forward  
15 to that.

16 Are there any other questions or comments  
17 regarding the Waterbury project?

18 Okay, that concludes our projects in the State of  
19 Vermont. I'd like to turn to the School Street project.

20 The 38 megawatt School Street project is located  
21 on the Mohawk River in New York. The project is owned by  
22 Erie Boulevard, LP, and the re-license application was filed  
23 in December of 1991.

24 Since the last workshop, Erie Boulevard filed a  
25 settlement agreement in March of 2005. Currently the water

1       quality certification is under state administrative appeal.  
2       Following the New York ALJ's decision, the New York  
3       Department of Environmental Conservation will be in a  
4       position to act on the water quality certification.

5               Bill Little, with the New York DEC, are you  
6       there?

7               MR. LITTLE: Yes, I am.

8               MR. PAWLOWSKI: Bill, can you provide us with an  
9       update on the water quality certificate hearings, and can  
10      you tell us when you may be in a position to make a  
11      decision?

12              MR. LITTLE: I'll try to do that, yes.

13              First and foremost, I'd like to thank the  
14      Commission for the opportunity to give an update; this is a  
15      great process.

16              I also want to point out that Erie and the New  
17      York State DEC were signatories to the settlement that Erie  
18      filed. So the administrative proceeding is actually joined  
19      by third party intervenors.

20              In June and July, after an issues conversation  
21      was convened by the administrative law judge, the parties  
22      briefed some preliminary legal issues. We have yet to  
23      receive a decision from the administrative law judge. I  
24      would expect that decision to be in hand before the end of  
25      this year, but unfortunately we don't have it yet. This

1       agency does have a heavy administrative action docket, so  
2       it's no real surprise. But I would expect an answer from  
3       the ALJ on those preliminary legal issues by the end of this  
4       year.

5               The track that this could be on after that is  
6       twofold, of course. One is that an administrative law  
7       judge's ruling could be appealed to our commissioner, but it  
8       also could allow us to go forward with a hearing. We'd  
9       probably need to complete matters in the issues conference,  
10      and if we do so, it's possible we could be in hearings in  
11      the winter or late winter or early spring. I can't  
12      guarantee that because I'm just not certain as to whether or  
13      not any administrative law judge's decision on preliminary  
14      legal issues would be appealed by the intervenors to our  
15      commissioner.

16             So that's the short-term outlook for this  
17      proceeding; but like any administrative proceeding, we look  
18      forward of course to a final decision after the hearing by  
19      the administrative law judge. Those are usually certified  
20      by our commissioner. That decision could then result in the  
21      finality of our water quality certificate. It could also,  
22      of course, result in an appeal to the state courts here of  
23      the commissioner's decision. That's more the long-term  
24      outlook, and we of course don't know which direction we're  
25      headed in yet in that context.

1 MR. PAWLOWSKI: Thank you, Bill.

2 Are there any other questions or comments  
3 regarding the School Street project before we conclude the  
4 first half of our session?

5 MR. BROWN: My name is John J. Brown. I am the  
6 Chairman and Chief Executive Officer of the Green Island  
7 Power Authority. GIPA is a public power authority created  
8 by the legislature of the State of New York and signed into  
9 law by the Governor of New York State.

10 I would like to thank Chairman Kelliher and  
11 Commissioner Kelly for hosting this technical workshop again  
12 this year. I recall the opening remarks of Chairman Wood  
13 last year in which he stated that the best way to address  
14 the concerns associated with unlicensed projects is to do it  
15 in a public manner that allowed the licensees, the other  
16 interested parties, staff from Congress and staff from FERC  
17 to work collectively to look at this in a public manner and  
18 understand what it is, the obstacles that are in place, that  
19 are standing in the way of the licenses being either issued  
20 or it's certainly possible that a case could be denied.

21 Chairman Wood went on to say that this workshop  
22 was a time to find out if there was substantial political or  
23 legal issues, or just anything out there that we need to  
24 know about. I'm not familiar with the internal  
25 communications policies within the Federal Energy Regulatory

1 Commission, and therefore I do not know what or how much  
2 project information goes beyond Commission Staff, so I'll  
3 take a few moments to share some of this information with  
4 you today.

5 MR. KATZ: Let me just interrupt and ask: Is  
6 this information going to deal with the processing of the  
7 School Street project? Because the Commission, both as a  
8 Commission and as Staff members are well aware that your  
9 entity has some significant differences with School Street,  
10 that it has an alternate proposal it wants to pursue. Those  
11 are not matters that are appropriate to be discussed here.

12 If you have comments on the nature of the School  
13 Street proceeding and how the Commission and the parties to  
14 that can overcome the roadblock to concluding that, that  
15 would be appropriate. This, however, is not a forum for  
16 discussion of the Green Island - project.

17 MR. BROWN: If you'd let me finish my comments,  
18 then you can say whether or not you think they're  
19 appropriate or not appropriate.

20 MR. KATZ: Just trying to give you a chance to  
21 self-edit.

22 MR. BROWN: Thank you very much. I've done that.

23 Let me start with political issues, which is what  
24 was raised last year by Chairman Wood. Both United States  
25 Senators from New York, Senator Schumer, Senator Clinton,

1 are publicly opposing the re-licensing of this project.

2 MR. KATZ: Excuse me again. That's an  
3 interesting fact, but it is not a roadblock, a procedural  
4 roadblock to the Commission's consideration of the School  
5 Street project. Again, we are well aware of that, we have  
6 received congressional correspondence which the Commission  
7 will respond to. And again, I don't mean to interrupt, but  
8 we are here to discuss the School Street project and what  
9 steps need to be done to finish up the licensing of that  
10 project.

11 So if there's something you can shed light on  
12 with respect to --

13 MR. BROWN: I think if you listen to my first  
14 sentence --

15 MR. KATZ: -- the state water quality, sir, it  
16 would be helpful.

17 MR. BROWN: -- I said I'm not sure how much  
18 information is brought up to the Chairman and the  
19 Commissioner. If the Chairman doesn't want to hear this, he  
20 can say he doesn't want to hear that the fact that I'm bring  
21 up as far as the interests of the region.

22 CHAIRMAN KELLIHER: I have a copy of the letter  
23 from the New York delegation, so I'm aware of their  
24 concerns. And I was here when Congressman McNulty expressed  
25 his concerns last year.

1                   MR. BROWN: And there's a letter that we have  
2 today to present for the record.

3                   I guess to my second question: Are you aware of  
4 the media and the public issues that surround this project?  
5 Are you aware that the comment, that the host communities  
6 are not even supporting the re-licensing of this project?

7                   MR. KATZ: Again, I don't mean to interrupt, but  
8 those concerns are substantive matters that the Commission  
9 needs to consider in processing the School Street project.  
10 The Commission theoretically deny a new license based on  
11 those concerns, or it could determine that it feels there  
12 are other considerations that are more paramount. But those  
13 are substantive matters dealing with the School Street  
14 project, they are not procedural matters relating to the  
15 wrapping up of that project.

16                  So again, I apologize for interrupting, but we  
17 really do have a strong distinction between procedural  
18 obstacles here and substantive obstacles in that we're  
19 required under the government and the Sunshine Act to give  
20 notice of what we're going to consider. Under that Act, the  
21 Commission can't consider matters that it has not told the  
22 public it would consider, and the notice of this proceeding  
23 said that the Commission would consider procedural matters  
24 related to these projects.

25                  So were we to want to have, if the Commissioners

1       were to want to have a substantive discussion, we would need  
2       to issue a public notice that said that that was what we  
3       were going to do; and I advised the Chairman and Commission  
4       Kelly that we did not do that in the notice of this  
5       proceeding; and therefore, under the Sunshine Act, it's  
6       really not appropriate to get into the substance of the  
7       School Street proceeding.

8               Which is not to undercut the importance of  
9       people's positions and the solemnness with which the  
10      Commission will review anything that gets filed in that  
11      docket. But this is not the forum for that.

12             MR. BROWN: Well, let me just go back to my  
13      initial statement in which I was restating Commissioner  
14      Wood's remarks of last year, where those are things that  
15      they wanted to hear before this meeting.

16             Now, if that's not something you want to hear  
17      today, I will certainly honor your wishes, and I will file my  
18      comments with the stenographer, and that will be it.

19             MR. KATZ: I appreciate that. I think that will  
20      be the way to proceed. And again, the School Street  
21      proceeding is ongoing, so anything that any person wishes to  
22      file in those proceedings, the Commission will review and  
23      will thoroughly consider when it acts in that proceeding.

24             MR. BROWN: And I will tell you, we'll be here  
25      again next year doing the same thing. Thank you very much.



1                   MR. PAWLOWSKI: Thank you. Are there any other  
2                   comments or questions regarding the School Street project?

3                   MS. FRANCES: My name is Francis Frances, and I'm  
4                   counsel for Green Island Power Authority. And I think that  
5                   we took to heart the question of how we could proceed to  
6                   bring an earlier conclusion to the issue; and John, I think  
7                   we're trying to be very respectful of your concerns in this  
8                   regard.

9                   With regard to that, in the slide that you have  
10                  up here, would it be correct that this slide could be read  
11                  to say that: Of all things that need to be done, the only  
12                  thing standing between the Commission and the issuance of a  
13                  new license is in fact the 401 proceeding, that that is all  
14                  that the Commission sees as tasks its staff needs to do?

15                  MR. KATZ: I think you could read it as saying,  
16                  the only thing that stands between Commission consideration  
17                  of the license application is a water quality certification.  
18                  It does not imply that the Commission will issue a new  
19                  license or not issue a new license; but it implies that in  
20                  terms of steps that the Commission needs to take, the Clean  
21                  Water Act precludes the Commission from issuing a license  
22                  unless it has State water quality certification or a waiver  
23                  therefore, and the Commission does not yet have that.

24                  Other things, such as completion of the  
25                  environmental document, ESA consultation, completion of

1        programmatic agreement and so on, are not listed as needing  
2        to be done for this proceeding. But that does not by any  
3        means imply or indicate anything about the process that the  
4        Commission will undergo internally to consider all the  
5        arguments that have been presented to it; or indeed whether  
6        parties will file additional arguments they want -- or  
7        additional documentation that they would like the Commission  
8        to consider before it acts.

9                MS. FRANCES: But in your agenda, you don't see  
10       any further public notices, for example, regarding the offer  
11       of settlement; in other words, a further supplementation of  
12       your environmental assessment, your final EA would not be on  
13       the agenda, or is it?

14               MR. KATZ: Those things might or might not occur,  
15       but they are not legal bars to the Commission proceeding in  
16       this matter. As to whether the Commission determines that  
17       it wants to take additional procedural steps, it can always  
18       do that.

19               MS. FRANCES: I didn't understand your answer;  
20       was it yes or no?

21               MR. KATZ: The answer was that the only legal bar  
22       as the Commission Staff sees it to proceeding is obtaining  
23       the water quality certification. As to whether the  
24       Commission chooses to supplement its environmental  
25       documentation, issue any further public notices and so

1       forth, that is always the Commission's option.

2               MS. MILES:   The settlement was noticed.    When  
3       the settlement was filed, it was noticed, so we have those  
4       comments.

5               MS. FRANCES:   Right.   I asked a question about  
6       the EA, the environmental assessment being separately, since  
7       it was a new proposal, the question was whether or not the  
8       public would get a chance to see staff's EA before, you know  
9       --

10              MR. KATZ:   Should the Commission choose to issue  
11       or supplement its environmental documentation, that will  
12       certainly be made available to the public.   It is also a  
13       legal option for the Commission to outline any environmental  
14       documentation it obtained subsequent to issuing a formal EA  
15       or EIS in the Commission's order itself; the Commission  
16       could choose to do that if it feels appropriate, and folks  
17       will have to wait and see what happens.

18              MR. PAWLOWSKI:   Okay, I believe that that -- I  
19       don't see any other -- oh.

20              MR. FINKELSTEIN   On the procedural issues, just  
21       to make clear for the record --

22              MR. PAWLOWSKI:   I'm sorry, I didn't --

23              MR. FINKELSTEIN:   This is Ben Finkelstein, also  
24       speaking with respect to the power authority.

25              We are understanding the slide to indicate that

1 Staff's belief is that no further action is necessary. Just  
2 to flag for everyone's attention, Green Island, its position  
3 is that in fact, under the law, supplementation of the  
4 environmental documents is necessary, and in fact the  
5 Commission itself committed to do that in 1995 when it  
6 declared the application to be ready for environmental  
7 analysis prior to the submission of the settlement  
8 agreement.

9 And also, we are concerned that the offer of  
10 settlement calls for amendment of the programmatic  
11 agreement. None of the three signatories to the  
12 programmatic agreement, none of the three parties were  
13 parties to the settlement. The State Historic Preservation  
14 Office, no; the Advisory Council, no; FERC Staff -- none of  
15 them were parties to the settlement. So we were somewhat  
16 surprised to not see listed in the remaining actions further  
17 106 consultations.

18 Also, the Mohawk Nation Council of Chiefs last  
19 year wrote to the Commission, stating that they would want  
20 to be consulted before any action were taken for any project  
21 affecting Cohoes Falls. So recognizing that this is the  
22 Staff position on these legal issues, we believe that there  
23 are further obstacles to issuance of the license that could  
24 be, that proactive action by the Commission Staff could help  
25 move this proceeding along.

1                   MR. KATZ: Okay. We thank you for that  
2 elucidation of your position.

3                   MR. PAWLOWSKI: Thank you. Are there any other  
4 questions or comments regarding the School Street project?

5                   MR. KATZ: Mr. Chairman, at this point we have  
6 finished up the East, and if it's your pleasure, it would be  
7 appropriate to adjourn until 11:30, when we'll start up with  
8 the West Coast.

9                   CHAIRMAN KELLIHER: Let's do that.

10                   (Recess.)

11                   CHAIRMAN KELLIHER: We're going to resume our  
12 workshop, and if we can close the door. And I hope the  
13 West Coast is on the line to help us.

14                   Why don't we start with California?

15                   MR. KATZ: Before we get started, let me briefly  
16 remind folks, in case there's anyone who is new, that we  
17 have a court reporter here, so anyone who speaks needs to  
18 either be speaking from a microphone here, or close to the  
19 mic if they're out to the regional offices; and please give  
20 your name and affiliation and any spellings that might be  
21 helpful to the court reporter.

22                   Also, we're here to discuss the procedural  
23 aspects of cases, not substantive issues. And with that,  
24 I'll turn it over to John Mudre.

25                   MR. MUDRE: Thank you, John.

1           There are nine Western projects on our list; six  
2       of them are in California and the other three are in the  
3       State of Washington.

4           The first project we'll talk about is the  
5       Escondido project. The Escondido project has the  
6       distinction of being the oldest project on our list. It's a  
7       1.64 megawatt project located on the San Luis Rey River, in  
8       San Diego County, California. The applicant is the City of  
9       Escondido, California.

10          The re-license application for this project was  
11       filed in 1971, and amended in 1975. The Commission issued a  
12       license for this project in 1979, which was vacated and  
13       remanded to the Commission by the United States Supreme  
14       Court in 1984 due to water rights issues between the city  
15       and a number of tribes.

16          A 1988 act of Congress required the Commission to  
17       defer re-licensing of the project until a comprehensive  
18       settlement agreement among the parties was filed. However,  
19       Congress did not establish a time frame for filing the  
20       settlement agreement.

21          The parties have been negotiating and filing  
22       semiannual progress reports since 2002. Since last year's  
23       meeting, the applicant filed a progress report in July of  
24       2005 and indicated that some progress had been made.  
25       However, as indicated on the slide, we still need a

1 comprehensive settlement agreement before we can re-license  
2 this project.

3 At last year's meeting, the City of Escondido  
4 indicated that they anticipated that an agreement would be  
5 filed in 2006. I'd like to ask Greg Ottinger, or any other  
6 representative of the parties, if the parties are still on  
7 track for a settlement in 2006.

8 MR. OTTINGER: Thank you, Mr. Mudre. I'm Greg  
9 Ottinger with Duncan and Allen here for the City of  
10 Escondido, and we will be filing our second semiannual  
11 status report this afternoon on this.

12 But as to your question, the answer is: I would  
13 have thought so until last July. The legislative act, the  
14 settlement act, required the Department of Interior to come  
15 up with 16,000 acre-feet of water to be used by Escondido  
16 Vista Irrigation District will be a co-licensee, and the  
17 bands of Mission Indians.

18 The 16,000 acre-feet of water was to come -- 4500  
19 of which would come from the lining of the Coachella Canal  
20 branch of the All-American Canal, which is underway and  
21 scheduled for completion in April of 2007. The remaining  
22 11,500 acre-feet of water was to come from the lining of the  
23 All-American Canal.

24 In July, unfortunately, three organizations; two  
25 California nonprofits and one Mexican nonprofit

1 organization, filed suit in the U.S. District Court in  
2 Nevada to enjoin the lining of the All-American Canal based  
3 on interests of farmers and merchants in Mexicali who  
4 enjoyed the seepage water from the unlined canal.

5 The lawsuits raise a number of issues, claiming  
6 violations of the Administrative Procedure Act, NEPA, the  
7 Migratory Bird Treaty Act, Endangered Species Act. The  
8 United States and the Department of the Interior and the  
9 Bureau of Reclamation and others have filed motions to  
10 dismiss. The original judge recused himself. A new judge  
11 has taken over and has stayed discovery, but hasn't set a  
12 timetable for ruling on the motions to dismiss.

13 Since this is 11,500 acre-feet of the 16,000  
14 acre-feet that the parties in interest are dividing up, this  
15 puts a whole cloud over things. If the suits are dismissed,  
16 then I think the answer is Yes. Escondido, Vista and the  
17 bands continue to meet; they're meeting three days this  
18 week, they're meeting again in two weeks to work out their  
19 issues. But if the lining of the All-American Canal should  
20 be enjoined, I would say the answer is No, and I don't know  
21 when I might estimate we'll be here with our final  
22 application.

23 MR. MUDRE: Thank you, Greg.

24 Is there anyone in the audience or on the phone  
25 or in one of the regional offices that has a comment or a



1 question, or any additional information for us?

2 CHAIRMAN KELLIHER: I have a couple of questions.  
3 The semiannual reports, is that a requirement we've imposed,  
4 or is that a requirement under the '88 settlement act?

5 MR. MUDRE: I think it's a requirement that we  
6 established during the first of these workshops.

7 CHAIRMAN KELLIHER: Okay. So five years ago.  
8 So there have been ten semiannual reports since  
9 then?

10 MR. MUDRE: I would think so.

11 CHAIRMAN KELLIHER: All of which indicating  
12 there's been progress?

13 MR. MUDRE: Some progress, I think.

14 CHAIRMAN KELLIHER: I can speculate that maybe  
15 all ten have said there has been some progress. But it's  
16 true, under the '88 settlement act, we cannot issue a  
17 license until this settlement is finalized. Correct?

18 Does Staff believe there's any prospect of this  
19 settlement in the near term? It doesn't seem so, from my  
20 point of view, but I can't say I've intimately followed  
21 this. There seems to be a very remote chance of a  
22 settlement.

23 MR. ROBINSON: There doesn't seem to be a built-  
24 in incentive to move the settlement discussions along, so  
25 that it would free us up to go forward with re-licensing.

1                   CHAIRMAN KELLIHER: What was the rationale in the  
2 settlement act for precluding the Commission from issuing a  
3 license? Was it somehow to preserve the water rights so  
4 that the Commission license doesn't affect the water rights  
5 of the parties?

6                   MR. MUDRE: I'm not aware of that; my involvement  
7 in this case doesn't go back that far.

8                   Anyone else?

9                   MR. KATZ: I think that's reasonable.  
10 Greg might be able to clarify.

11                  MR. OTTINGER: I'm afraid I was not involved in  
12 the legislative aspects that led to this legislation. It is  
13 the truth that there has been progress in each year. Part  
14 of it was slowed down because the California Colorado River  
15 settlement didn't take place until just two years ago, and  
16 that's when finally the 16,000 acre-feet from the lining of  
17 these canals, the financing was approved and the  
18 conveyancing and all of that.

19                  So it hasn't all been in the -- any delays are  
20 not strictly due to Escondido, Vista and the bands of  
21 Indians.

22                  CHAIRMAN KELLIHER: I'm not blaming any  
23 particular parties, but it just seems from our point of  
24 view, this project -- a re-license was filed in 1971, I'm  
25 assuming, backing up from that, that the original license

1 goes back to the 1920s, the early or mid-Twenties.

2 MR. OTTINGER: That would be correct.

3 CHAIRMAN KELLIHER: This project is operating  
4 under a license issued 80 years ago, and I think inaction on  
5 this proceeding does come at a cost. There's a cost to the  
6 forfeited environmental benefits, recreational benefits that  
7 would be accomplished through a settlement that actually  
8 reflects current law and the Commission's current approach.

9 So I think there is a cost to inaction, and it seems the  
10 settlement act prevents us from acting.

11 I can understand the likely policy goal of the  
12 settlement act was to make sure the Commission somehow  
13 doesn't interfere with the water rights of the parties in a  
14 re-license, but I think we can do that. We can issue a re-  
15 license that doesn't change the water rights of the parties,  
16 I believe.

17 So anyway, I think there is a problem, and if you  
18 accept as a premise that there's not going to be a  
19 settlement anytime soon, it means the Commission cannot  
20 issue a re-license, and it means we're forfeiting all the  
21 possible benefits that could be achieved through a re-  
22 license; and maybe there's a need for a legislative solution  
23 that allows us to issue a license, a re-license, but also  
24 doesn't somehow reallocate the water rights of the parties.

25 So that's a statement rather than a question, I

1       suppose; but you look at it, filed in 1971, this license  
2       goes back to the 1920s, and I guess it's already broken the  
3       Tacoma-Cushman record. I thought that was a long  
4       proceeding, but this one -- we did issue a license. The  
5       Commission did act in a prompt manner on the '71 filing, but  
6       the Supreme Court put it aside.

7               MR. KATZ: Mr. Chairman, I would just clarify  
8       that typically when the Commission issues a license, it  
9       doesn't -- the Federal Power Act precludes the Commission  
10      from adjudicating water rights, and typically the Commission  
11      does nothing with water rights; it gives the licensee the  
12      right to use whatever flows go thru its project; but if  
13      those flows are owned by somebody else and diverted by  
14      somebody else, that's the licensee's problem in terms of the  
15      power that it's able to generate; but those are typically  
16      not issues that the Commission seeks to adjudicate or in any  
17      way affect.

18             CHAIRMAN KELLIHER: But that's the heart of the  
19      settlement discussions; it's over water rights and  
20      allocation of water, and I just don't see why there needs to  
21      be a linkage between our re-license and those settlement  
22      discussions.

23             Anyway, thanks for that opportunity.

24             MR. MUDRE: Thank you.

25             Anything further on Escondido?

1           Okay, our next project is the El Dorado project.  
2       The El Dorado project is a 21 megawatt project located on  
3       the South Fork of the American River in El Dorado, Alpine,  
4       and Amador Counties, California.    The applicant is the El  
5       Dorado Irrigation District.   The re-license application for  
6       this project was filed in 2000.

7           Since last year's meeting, the applicant has re-  
8       filed its request for water quality certification with the  
9       California State Water Resources Control Board, the Water  
10      Board, for short.

11          The only item remaining before a license can be  
12      issued for this project is the issuance of the water quality  
13      certificate, which is currently due in April of 2006.

14          At this point, I'd like to ask a representative  
15      for the Water Board whether they're on track for issuance of  
16      a water quality certificate for this project by April 2006  
17      or sooner, and I think Samantha Olson is on the phone, but  
18      there may be others as well.   So whoever wants to speak up  
19      first.

20          MR. CANADAY:   This is Jim Canaday, C a n a d a y.  
21      I'm the Chief of the FERC licensing unit in California.

22          And yes, we are indeed on course to issue before  
23      April 4th.

24          MR. MUDRE:   That's great to hear, Jim, and it's  
25      good to talk to you again.

1 MR. CANADAY: Happy holidays.

2 MR. MUDRE: Same to you.

3 Is there anyone else in the audience, on the  
4 phone, or in one of our regional offices that wants to  
5 provide any information on this project?

6 CHAIRMAN KELLIHER: So if that action is timely,  
7 we'd be able to act after April?

8 MR. MUDRE: Yes, sir.

9 The next project under discussion today is the  
10 Vermillion Valley project. The Vermillion Valley project is  
11 a storage project that doesn't have any generation  
12 facilities. It's located on Mono Creek in Fresno County,  
13 California. The applicant is the Southern California Edison  
14 Company. The re-license application was filed in 2001.

15 Since last year's meeting, the applicant has re-  
16 filed its request for water quality certification with the  
17 California State Water Resources Control Board. The items  
18 remaining before a license can be issued for this project  
19 are the issuance of the water quality certificate, which is  
20 currently due in October 2006, and signature by the  
21 California State Historic Preservation Officer, or SHPO, on  
22 the final programmatic agreement.

23 At this point I'd like to ask a representative  
24 from the Water Board -- Jim, I guess you if you're still  
25 there -- whether or not you are on track for issuance of a

1 water quality certificate by October 2006 or sooner?

2 MR. CANADAY: Let me put Vermillion Valley in  
3 perspective for folks at the Commission that may not  
4 understand its placement in the project. It is an upper  
5 state, one of the largest developments in California, and I  
6 suspect in the nation; articulated hydro-developments is the  
7 Big Creek system by Southern California Edison. And that  
8 system has multiple licenses, I believe nine.

9 And the Vermillion Valley is one of those  
10 licenses up in the upper watershed; and we have been working  
11 with Southern California Edison and a large group of people  
12 over the last three or four years on an ALP process, and in  
13 fact yesterday, SCE was supposed to file their PDEA with the  
14 Commission.

15 So we've been working to develop an overall in-  
16 stream flow and package for that whole watershed, and we're  
17 not inclined to issue a license at Vermillion until we have  
18 an idea of how we're going to integrate that in the overall  
19 project.

20 Now we do have various different alternatives now  
21 that have been prepared; we're still negotiating with SCE,  
22 if they choose not to -- if they want us to go ahead and  
23 issue, we could do that; but I think it's in their interests  
24 to price this from a watershed perspective and have a puzzle  
25 piece in this overall Big Creek system.

1                   So we certainly could issue by October; but we  
2                   would hope that we would have an overall package to where we  
3                   could issue a cert that would cover licenses that are  
4                   forthcoming, not even up for renewal at the present time,  
5                   with the idea that we would do this watershed-scale, kind  
6                   of, re-licensing.

7                   MR. MUDRE: Thank you for that information, Jim.  
8                   What sort of timetable do you think you're  
9                   looking at?

10                  MR. CANADAY: Well, part of that I don't control.  
11                  That's indeed part of Southern California Edison, and now  
12                  that they've filed the PDEA, we've got meetings -- we've  
13                  held hundreds of hours of meetings with the SCE and the  
14                  other interested parties, and now that they filed that,  
15                  we're focused back again on looking at negotiations and in-  
16                  stream flows, and the whole package, working with all the  
17                  agencies and stuff.

18                  So we've got meetings scheduled -- I'll assume  
19                  we'll have meetings every month from now until forever; but  
20                  the idea is, if we can come up with an overall package that  
21                  includes the releases from Vermillion, even though it's a  
22                  storage project and lacks no power, it controls a lot of  
23                  water that is important to the Upper San Joaquin River  
24                  system, and that's what we're all trying to work through, in  
25                  the wilderness area, in the Sierras.



1                   So if we can come to an agreement with SCE, then  
2                   we'll issue a cert as a package. If not, we can certainly  
3                   issue a cert within the time frame. I don't think that's in  
4                   SCE's interest, unless we can't come to an agreement.

5                   MR. MUDRE: Okay. Is there anyone on the phone  
6                   from SCE?

7                   MR. MASCOLO: Yes, sir. This is Nino Mascolo, M  
8                   a s c o l o, and with me is Jeff Rabone, R a b o n e. We're  
9                   both from Southern California Edison Company.

10                  And Jim is correct in that we have been meeting  
11                  on an alternative licensing process procedure for four other  
12                  projects, not for the Vermillion project. And we also  
13                  believe that a settlement agreement for those other four ALP  
14                  projects is possible before October, and we would like to  
15                  achieve that so Jim can make an integrated water quality  
16                  certificate for all the projects that are being involved.  
17                  But if that's not the case, and if by July, August we don't  
18                  have a settlement agreement, Edison would encourage the  
19                  State Water Board to issue a separate water quality  
20                  certificate for the Vermillion project so that we can  
21                  proceed with obtaining a license for that project and move  
22                  forward.

23                  MR. MUDRE: Thank you, Nino.

24                  MR. FARGO: This is Jim Fargo, I'm the Project  
25                  Coordinator for both the Big Creek re-licensing and also for

1 the Vermillion Valley re-licensing.

2 Jim, and Jeff, I would like to kind of understand  
3 from both of you, it seems like the issue that had been  
4 holding up the Vermillion Valley from going out by itself on  
5 a timely basis has been a site-specific issue, having to do  
6 with one of the stream reaches below the Vermillion Valley  
7 Dam.

8 Is the information available, so that if you  
9 don't have this comprehensive settlement wrapped up by next  
10 July, is the information available for the Board to go ahead  
11 and issue a water quality certificate for the Vermillion  
12 Valley project individually?

13 MR. CANADAY: Now that we have information over  
14 the whole watershed it is. But before, to isolate this one  
15 project and look at it by itself, when you're trying to  
16 consider the management of the whole upper watershed of the  
17 San Joaquin River system is not good watershed management.

18 So now that we've gone thru the exercise with SCE  
19 and their consultants, we have a very good idea now of how  
20 the whole system operates and the different places that  
21 water moves in and out and about and through their project;  
22 yes, we could probably do that, but at the same time, I  
23 don't think Southern California -- we aren't in agreement  
24 with Southern California at the present time of what that  
25 flow should be, and what we're trying to do is to develop

1       this integrated package.

2               I agree with Nino; if, come August or September  
3       that it becomes clear that we aren't going to be able to  
4       achieve some sort of reasoned agreement, then we would go  
5       ahead and move forward with what we believe needs to be  
6       there.

7               MR. MUDRE:   So your answer is Yes, you have the  
8       information needed to go forward with what you think would  
9       be there, if this agreement doesn't happen?

10              MR. CANADAY:   We have the information; we also  
11       have to comply with CEQA, though that's another aspect of  
12       it.   Nino and I have a disagreement of what CEQA entails,  
13       but notwithstanding that disagreement, we still have to  
14       comply with that; and so that's another piece.

15              So even if I had it all sitting on my desk today,  
16       I couldn't issue a cert until I comply with that body of  
17       law.   Just like you have to comply with NEPA.

18              MR. MUDRE:   Right, and where are you in that  
19       process?   This is John Mudre.   Where are you in your CEQA  
20       process?   Are you doing an EIR, or?

21              MR. CANADAY:   We're waiting to see what's in the  
22       PDEA and how that comes about; we're also focusing on trying  
23       to come up with an integrated package for that whole  
24       watershed; and then we can decide, and also based on  
25       agreement, as you know John, if SCE and the State are not in

1       agreement, the CEQA document then becomes an EIR. If we are  
2       in agreement, it becomes a neg deck.

3               So that's why it's so important for us to work  
4       through this whole effort here to come to some sort of  
5       agreement. I think we're going to get there, quite  
6       honestly, and we appreciate all the work that the company  
7       has done to date. But this is, like I said, one of the --  
8       it is the largest integrated hydro watershed in the country,  
9       so it does take some thinking.

10              MR. MUDRE: Well, thank you for that response,  
11       Jim, and we'd like to thank you for your efforts as well.

12              MR. ROBINSON: This is Mark Robinson. Jim, if I  
13       could just make a couple observations.

14              One, I fully appreciate the need to have an  
15       understanding of the basin to approach Vermillion, but I  
16       would hope that the desire to understand and fix or resolve  
17       all the issues in the basin don't become impediments for us  
18       moving forward on Vermillion. So I really support the idea  
19       that you both proposed there of giving this a little bit of  
20       time to see what you can do universally, but not lose sight  
21       of the need to move forward on this particular project and  
22       get the licensing behind us.

23              The second point is, on your CEQA  
24       responsibilities, we do a whole lot of work with California,  
25       both in the hydro arena and the gas arena, and we stand as

1 always ready to work with you to integrate your CEQA process  
2 with our NEPA process, so that we're not doing it  
3 sequentially.

4 Anytime that you would like, our Staff is more  
5 than happy to work with you to make sure that your  
6 environmental quality act document needs are prepared at the  
7 same times that ours are so that we don't have to get to  
8 this stage of the process and then start interacting on  
9 CEQA. So we do this very effectively in other areas, and we  
10 sure would like to do it in the hydro area as well in  
11 California.

12 MR. CANADAY: I'd like to respond. First of all,  
13 the Vermillion project, and the water out of that project,  
14 and how much water comes out of that project and when goes  
15 to four or five other powerhouses; so that's how it's linked  
16 to the overall project. It's not an isolated piece of  
17 water, and that's why it's so important to understand how it  
18 fits into the watershed.

19 MR. ROBINSON: I appreciate that.

20 MR. CANADAY: So it's not as simple as it might  
21 sound.

22 Second of all, you know, I echo what you have  
23 said, and I've been asking the Commission for the twenty-  
24 some-odd years that I've been working on projects with the  
25 Commission, to try to do an integrated document. And

1       working with Tim Welsh, I think we're moving in that  
2       direction.

3               So what you're asking to do, I have been  
4       requesting for years. So I'm hoping that that will come to  
5       fruition.

6               MR. ROBINSON: Well, let's just do it. We're  
7       doing it in other areas in California, there's no reason we  
8       can't do it in hydro as well.

9               MR. MUDRE: Okay. On a note now that we've also  
10      been following up with the State Historic Preservation  
11      Officer on the final programmatic agreement for the  
12      protection of cultural resources at this project.

13              In August 2005, we provided the SHPO with some  
14      additional information they had requested; and requested  
15      again that they sign the programmatic agreement.

16              I'd like to ask someone from the State Historic  
17      Preservation Office about the status of the programmatic  
18      agreement. Is there anyone from the SHPO on line or at a  
19      regional office?

20              (No response.)

21              Is there anyone else who may know the status of  
22      the programmatic agreement for this project?

23              (No response.)

24              Okay, well, we'll have to get that information  
25      another time.

1           Anyone else in the audience or on the phone with  
2           any comments or questions about this project?

3           (No response.)

4           Okay, let's move to our next project.

5           The next project is the Pit 3,4,5 project. It's  
6           a 325 megawatt project located on the Pit River in Shasta  
7           County, California. The applicant is the Pacific Gas &  
8           Electric Company, and the re-license application was filed  
9           in 2001.

10          Since last year's meeting, the applicant has re-  
11          filed its request for water quality certification with the  
12          Water Board. In addition, the State Historic Preservation  
13          Officer has signed the programmatic agreement.

14          So now that we have the programmatic agreement,  
15          the only item remaining before a license can be issued for  
16          this project is the issuance of the water quality  
17          certificate. The water quality certificate is currently due  
18          by August 2006.

19          So at this time I'd like to ask Jim Canaday  
20          whether or not you're on track for issuance of a water  
21          quality certificate by August of 2006 or sooner, for Pit  
22          3,4,5?

23          MR. CANADAY: Indeed we are.

24          MR. MUDRE: Would you like to -- do you have any  
25          -- where are you in your process?

1                   MR. CANADAY: We're preparing to circulate an  
2 addendum to your NEPA document, because it didn't cover what  
3 we needed, and so we're going to circulate that. It's going  
4 to happen shortly. Once we do that, and the comment period  
5 is 45 days, runs, and depending on how many comments we get,  
6 then we're prepared to draft the cert.

7                   MS. MILES: Great, Jim. It's good to hear that  
8 you're on track for that issuance by August. Thanks.

9                   MR. MUDRE: Anyone else have any comments or  
10 questions about this project?

11                   (No response.)

12                   Okay, let's move to the next project.

13                   The next project is the Santa Felicia project.  
14 The Santa Felicia project is a 1.4 megawatt project located  
15 on Piru Creek in Ventura County, California. The applicant  
16 is the United Water Conservation District.

17                   The re-license application was filed in 2002, and  
18 this project is new to the list.

19                   Our review of the license application for this  
20 project indicated that additional information, including two  
21 seasons of additional field studies were needed before we  
22 could begin our environmental analysis of the applicant's  
23 proposal.

24                   After obtaining this information, we formerly  
25 accepted the information in April of 2005, and issued a



1 notice in June of 2005 that the application was ready for  
2 environmental analysis.

3 Processing of this application is now moving at a  
4 good pace. In November, we issued our environmental  
5 assessment and our final programmatic agreement for the  
6 protection of cultural resources at this project. However,  
7 a number of steps remain in this proceeding, including the  
8 receipt of comments on the final EA, and final 4e conditions  
9 from the Land Management Agency; completion of Endangered  
10 Species Act consultation, execution of the programmatic  
11 agreement, and resolution of potential inconsistencies  
12 between certain Fish and Wildlife agency Section 10J  
13 recommendations and the Federal Power Act.

14 At this point I'll ask if there's anyone in the  
15 audience or on the phone that would like to provide us any  
16 additional information concerning this project.

17 MR. DICKENSON: Yes, hello. This is John  
18 Dickenson in the San Francisco regional office. That's D i  
19 c k e n s o n, and I'm with the United Water Conservation  
20 District.

21 I'd just like to say also that as was discussed  
22 in an earlier project, that we will also need to create a  
23 CEQA document, and I understand Jim Canaday is on the phone  
24 with State Board also; and the State Board has asked that  
25 United Water be the lead agency in the CEQA process; so to

1       that end, we intend to take the EA which we received this  
2       week, and create a CEQA document out of that, and issue  
3       whatever form of CEQA document that's supposed to be here in  
4       the next several weeks to maybe early January, for issuance.

5               MR. MUDRE: Well, that's great news.

6               Anyone else with comments? Questions, or  
7       information?

8               MS. HARRIS: This is Melanie Harris from the  
9       National Marine Fisheries Service.

10              About the due date for the biological opinion,  
11       our regional staff told me that we've not received a formal  
12       consultation request under ESA from FERC staff.

13              MR. MUDRE: Okay, that just went out --  
14       yesterday.

15              MS. HARRIS: Thank you.

16              MR. MUDRE: So we must not have FedEx'd it.

17              MR. DICKENSON: I think on this one is that there  
18       was an initial holdup while some studies were done, but that  
19       now things are rolling along and there's not anything in  
20       particular that anyone is out of time on and so on at this  
21       point; and it's on the list because of its age, but there's  
22       nothing -- no difficulty at the moment that needs to be  
23       worked through.

24              CHAIRMAN KELLIHER: I have a question about the  
25       10J inconsistencies. Are those inconsistencies among or

1       between federal agencies, conditions, or federal and state  
2       agencies?

3               MR. KATZ:   What that is is that state and federal  
4       resource agencies can proffer conditions, recommendations to  
5       the Commission under Section 10J; and what that section  
6       requires is that the Commission determine whether any of  
7       those conditions, in its view, are inconsistent with the  
8       Federal Power Act or with other law.

9               CHAIRMAN KELLIHER:   It's not inconsistent with --  
10

11              MR. KATZ:   With each other, no.   And so then the  
12       Commission sits down and in the vast majority of the cases,  
13       Staff works out with the resource agencies their differences  
14       and comes up with conditions that are acceptable.   Where the  
15       Commission doesn't, it needs to explain its basis when the  
16       order issues.

17              CHAIRMAN KELLIHER:   Thank you.

18              MR. CANADAY:   This is Jim Canaday.

19              We are aware of the EA that just came out on the  
20       28th of November, but just for the record so you know what  
21       has been going on is that there has been a difference of  
22       agreement between various agencies and the district as far  
23       as what needs to be done for Lower Piru Creek.   And so we've  
24       enlisted Rick Miles and his dispute resolution group to --  
25       and we've been working with him over the past several

1 months, and we appreciate the service that he's provided.

2 We're still working towards some sort of  
3 agreement. At the current state of affairs, there is not an  
4 agreement of what the flow should be in that section of  
5 stream, or what actions need to be taken in that section of  
6 stream. And from my quick review of the EA, it's unclear  
7 that the EA identifies what needs to be done there as well.

8 So we hope that over the next month or so,  
9 working with Rick and his people, that we will come to some  
10 sort of mutual agreement with John and his folks, and that  
11 we can wrap that up fairly quickly.

12 MR. MUDRE: Okay, thank you for that, Jim.

13 MR. TANAKA: This is Kevin Tanaka from Interior,  
14 Solicitor's Office. I had a question along the lines of  
15 Melanie's, which is, did you send a letter to the Service,  
16 also, to the Fish and Wildlife Service? Or just NMFS.

17 MR. MUDRE: I'm sure we did, yes.

18 MS. MILES: There was a letter send to both of  
19 you, and it did just go out; so there's no expectation that  
20 you've gotten it yet, but it should be there shortly.

21 MR. TANAKA: All right. Thank you.

22 MR. MUDRE: Anyone else?

23 Okay, let's move along.

24 Our next project is the final project in  
25 California, and it's the Upper North Fork Feather River

1 Project.

2 The Upper North Fork Feather River Project is a  
3 343 megawatt project located on the Upper North Fork of the  
4 Feather River in Plumas County, California. The applicant  
5 is the Pacific Gas & Electric Company.

6 The re-license application was filed in 2002, and  
7 th is project is new to the list.

8 Following scoping meetings in April of 2003, we  
9 had requested additional information from the applicant that  
10 we needed before we could begin our environmental analysis  
11 of the application. Upon receipt of this information in  
12 August 2003, we issued a notice stating that the application  
13 was ready for environmental analysis, and requesting terms  
14 and conditions from the resource and land management  
15 agencies.

16 In April of 2004, we received a partial  
17 settlement agreement, executed among the applicant and a  
18 number of parties. In September 2004, we issued our draft  
19 environmental impact statement for this project.

20 Following the issuance of the draft EIS, in  
21 response to comments received, we expanded the scope of our  
22 analysis to include consideration of potential measures for  
23 providing cooler water to downstream reaches of the Upper  
24 North Fork Feather River. This necessitated another request  
25 for information from PG&E, and the requested information was

1 received in January of 2005.

2 In March 2005, while we were preparing our final  
3 EIS, the National Marine Fisheries Service modified its  
4 fishway prescription and 10J recommendations for the  
5 project. We revised our analysis to include these items.

6 The final EIS was issued in November 2005.  
7 Because our analyses of the downstream water temperature  
8 measures and the modified fishway prescription and 10J  
9 measures first appear in the final EIS, we requested  
10 comments in our treatment of these measures. Those comments  
11 are due this month.

12 At this time, other remaining items include a  
13 water quality certificate from the State Water Resources  
14 Control Board, which is currently due by August 2006, and a  
15 signature on the final programmatic agreement for the  
16 protection of cultural resources, which was due in September  
17 of 2005.

18 At this point I'd like to ask Jim, if he's still  
19 there, about the status of the water quality certification  
20 process, and if they're on target to issue a water quality  
21 certificate by August 2006 or sooner.

22 MR. CANADAY: No, we're not, John. Part of the  
23 problem is that when you, when the Commission issued its  
24 first EIS, it didn't take into account probably one of the  
25 more controversial issues, and that was water temperature

1 control, both maintaining adequate cold water supplies in  
2 Lake Almanor and cold water and trying to do some  
3 restoration on the North Fork Feather downstream.

4 MR. MUDRE: You're talking about the draft EIS,  
5 right?

6 MR. CANADAY: That's correct.

7 So we could not use that document for our own, so  
8 we've undertaken our own analysis, which we intend to  
9 continue to do, and we're in the process of doing that.  
10 Whether we're going to have a document finished and  
11 circulated for public comment or not by August, we don't --  
12 we're not sure. But part of the controversy up in the Basin  
13 has been in part due to Pacific Gas & Electric, and we  
14 intend to carry out our analysis to looking at again, the  
15 overall watershed view of the North Fork Feather River,  
16 particularly now since there's being considered moving  
17 salmon in a trap and truck or some other method above Lake  
18 Oroville into the North Fork Feather River. We have to  
19 analyze whether that is going to create, or we can create  
20 habitat that isn't there now in our analysis.

21 MR. MUDRE: Well, hopefully you can find our  
22 final EIS of some value to you as you do your analyses.  
23 Because we did look at both of those issues.

24 MR. CANADAY: Well, we just got it two days ago,  
25 so we'll take a look at it.

1 MR. MUDRE: Okay. Thank you, Jim.

2 MR. ROBINSON: This is Mark Robinson. Jim, one  
3 step further.

4 After you review that, is it possible that you  
5 might reevaluate whether or not you need to go forward with  
6 any additional studies on your part, and let us know whether  
7 or not you think that the analysis we did would stand for  
8 whatever it is you need?

9 MR. CANADAY: Well, we're sure willing to take a  
10 look at your document and see if it addresses those areas  
11 that we have to address; thermal curtains and cold water  
12 pools, and refugia and project operations; you know,  
13 alternatives to established cold water. I'll be pleasantly  
14 surprised if they're there.

15 MR. ROBINSON: We specifically tried to do that  
16 in that final document, so hopefully it will speed you all's  
17 process along a little bit.

18 MR. CANADAY: Well, that will be great.

19 MR. MUDRE: Thank you, Jim.

20 I'll ask this in hopes that someone from the SHPO  
21 has called in. Is there anyone that can update us on the  
22 status of the PA for this project?

23 (No response.)

24 Any other comments from people on the phone, in  
25 the audience, or our regional offices concerning this



1 project?

2 MS. MILES: I wanted to say one thing that's not  
3 to do with this project, but -- this is for you, Jim.

4 I know that you and Tim Welch and some of his  
5 staff have been working together to see if we can find a way  
6 to use a joint environmental document. This is what Mark  
7 had talked to; it's really, sure becomes obvious when we go  
8 through all these presentations in California.

9 I'd like to make sure we're continuing to do that  
10 with the projects that are outstanding. You know, we're  
11 working on a lot of other projects in California, and I  
12 think it would be just terrific if we can find a way to use  
13 our document and have it address the things that you need it  
14 to do so that we're working jointly with this. That  
15 certainly is what the, you know, the new integrated  
16 licensing process is all about.

17 So is there anything that you could suggest that  
18 we could do more? Can we get a series of meetings going  
19 where we're looking at each of the ongoing projects to see  
20 how we can get this into action?

21 MR. CANADAY: Well, I think certainly it would be  
22 helpful if we had a couple more meetings to look at the new  
23 process, to make sure that there are different ways that we  
24 can coordinate jointly. We're doing that with the DeSabra-  
25 Centerville already, and our great hope is that that's going

1       to be successful. And we certainly want to be able to use  
2       your document if we can, and even our own CEQA regulation  
3       encourages that. But nevertheless, the document will need  
4       to reflect the independent judgment of the agency using it;  
5       in that case it would be us.

6               So what Tim and I talked about was a way of doing  
7       that to where it didn't prejudice each one of us from making  
8       our own determinations of what, how our mandates are met;  
9       and I think if we can take the next step in discussions for  
10      that, that would be quite helpful.

11             MS. MILES: Okay, I'm going to ask Tim to give  
12      you a call so that you can set up a meeting. I think that's  
13      exactly what we're trying to do with the ILP. And we have  
14      made a point of changing a slight bit the structure of our  
15      environmental documents so that the resource sections simply  
16      do an analysis of effects and don't draw any conclusions;  
17      and we've kept our conclusions moved to the end of the  
18      document in a comprehensive development section, so it would  
19      allow you to use the analysis; but if we differ on  
20      conclusions, to not have to use that part of it.

21             So we'll be in touch with you, and appreciate  
22      your willingness to talk and see if we can work something  
23      out.

24             MR. CANADAY: I appreciate the efforts, Ann.  
25      Thank you very much.

1 MS. MILES: You're welcome. Same here.

2 MR. MUDRE: And thank you, Jim.

3 MS. OLSON: This is Samantha Olson, Staff Counsel  
4 for the State Water Resources Control Board. I just have to  
5 say a couple things in general about the CEQA-NEPA  
6 integration.

7 It would be terrific if we can isolate the  
8 analysis, and I just want to clarify that the conclusions,  
9 there's two different types of conclusions. Impact  
10 conclusion should be in the document that we need to use for  
11 CEQA. The second kind of conclusion is, you know, the  
12 decision of your agency.

13 So as long as we're clear on that. And I've been  
14 working a lot with this integration on the Pit project, and  
15 one of the things for the document, we find it pretty  
16 satisfy except for the circulation requirements under CEQA,  
17 Title XIV, 15-225. And so for the future, if we can get the  
18 notice of CEQA, we can go a long ways to integrating these  
19 processes.

20 MS. MILES: Sounds good. Thanks.

21 MR. MUDRE: Okay, let's turn our attention now to  
22 the State of Washington, where we have three projects that  
23 are on the list.

24 MR. CANADAY: John, this is Jim Canaday. Are  
25 there any other questions for California? Or we're going to

1 sign off, then.

2 MR. MUDRE: Okay, Jim. Thanks for joining us.

3 MR. CANADAY: Okay, John. Thank you.

4 MR. MUDRE: The first project in the State of  
5 Washington is the Condit project. The Condit project is a  
6 14.7 megawatt project located on the White Salmon River in  
7 Skamania and Klickitat Counties, Washington. The applicant  
8 is PacifiCorp.

9 The re-license application was filed in 1991.  
10 We issued a final environmental impact statement for this  
11 project in 1996. After we issued our final EIS, the  
12 applicant and stakeholders entered into settlement  
13 negotiations; and in October of 1999, a settlement agreement  
14 for decommissioning the project was filed with the  
15 Commission.

16 We issued a final supplemental EIS, which  
17 considered the proposed decommissioning in June of 2002.  
18 Since the last workshop, the applicant has re-filed its  
19 request for a water quality certificate with the Washington  
20 Department of Ecology -- Ecology for short -- and Ecology  
21 issued a draft Environmental Assessment in support of their  
22 water quality certification in October of 2005.

23 The remaining items needed are: a biological  
24 opinion from the National Marine Fisheries Service, which  
25 was due in August of 2002. A biological opinion from the

1 U.S. Fish and Wildlife Service, which was due in April of  
2 2005, and a water quality certificate for the surrender,  
3 which is due by May of 2006.

4 At this point I'd like to ask a representative  
5 from the National Marine Fisheries Service about the status  
6 of its Biological Opinion.

7 MS. HARRIS: Melanie Harris, again for National  
8 Marine Fisheries Service.

9 The Biological Opinion should be done in the next  
10 30 days. The reason why it's been held up since 2002, we've  
11 had a number of legal and policy changes in the last few  
12 years that have affected our being able to complete that,  
13 such as new listing decisions, hatchery policy, new critical  
14 habitat designations.

15 So that is on track to be done in the next month.

16 MR. MUDRE: Within the next how much?

17 MS. HARRIS: Within the next 30 days.

18 MR. MUDRE: Oh. Great.

19 The same question for the Fish and Wildlife  
20 Service.

21 MR. TANAKA: This is Kevin Tanaka from Interior,  
22 Solicitor's Office.

23 I was informed by the Service that they actually  
24 sent the BO in on, looks like November 29. So it should --

25

1 (Laughter)

2 -- be here real soon, okay?

3 CHAIRMAN KELLIHER: These meetings are very  
4 helpful, aren't they?

5 (Laughter)

6 MR. MUDRE: That's great news.

7 Finally I'd like to ask a representative of the  
8 Washington Department of Ecology about the status of the  
9 water quality certification process, and if they're on track  
10 to issue a water quality certificate by May of 2006 or  
11 sooner.

12 Anyone from Ecology on the phone?

13 (No response.)

14 Okay, we'll have to get that information at a  
15 later date.

16 MS. MILES: Is there anyone else who has any  
17 information about that, PacifiCorp? Any chance, do they  
18 know?

19 MS. MILLER: Good morning. This is Gail Miller  
20 from PacifiCorp, project manager for Condit.

21 And it is my understanding in conversations with  
22 Ecology that they do plan to complete their environmental  
23 review by January of 2006 and are on track to issue a 401  
24 certificate by April or May of 2006.

25 MR. MUDRE: Thank you for that information.

1 MS. MILES: That's good news.

2 MR. MUDRE: Anyone else with comments, questions,  
3 or information concerning the Condit project?

4 (No response.)

5 Okay, let's move along.

6 Next project is the Yale project. The Yale  
7 project is an 134 megawatt project located on the North Fork  
8 of the Lewis River in the Clark and Cowlitz Counties,  
9 Washington, and the applicant is PacifiCorp.

10 The re-license application for this project was  
11 filed in 1999, along with a request that the Commission  
12 delay processing of the application to allow for a  
13 concurrent environmental review of this application with the  
14 re-license applications for three other adjacent projects on  
15 that river, which were not due to be filed until 2004.

16 The Commission granted that request, and the  
17 applications for those other projects were timely filed in  
18 2004.

19 Since last year's meeting, the applicant filed a  
20 comprehensive settlement agreement in September of 2004.  
21 Also, the applicant filed its request for water quality  
22 certification in February 2005.

23 In September 2005, we issued our draft, multi-  
24 project environmental impact statement and our draft  
25 programmatic agreement for the protection of cultural

1 resources.

2 Our final programmatic agreement for the  
3 protection of cultural resources was issued in November; and  
4 I'm pleased to report that since these slides were made, the  
5 programmatic agreement was signed by the State Historic  
6 Preservation Officer, and we received final 4e conditions  
7 from the Forest Service.

8 At this point our processing of this application  
9 is proceeding at a normal pace. In terms of remaining  
10 actions, we have a meeting scheduled for December 7 to  
11 discuss potential inconsistencies between certain 10J  
12 recommendations and the Federal Power Act.

13 In addition, we still need any modified terms and  
14 conditions from Fish and Wildlife agencies, completion of  
15 Endangered Species Act consultation, and issuance of our  
16 final EIS.

17 At this time I'd like to ask someone from the  
18 Washington Department of Ecology about the status of its  
19 water quality certification process for this project;  
20 although unless they've just gotten on the phone, we're not  
21 going to hear from them. But anyone from PacifiCorp can  
22 give us an update on this.

23 MS. MILLER: Again, this is Gail Miller from  
24 PacifiCorp, and I just have to admit that I'm not really  
25 familiar with the details of the project; and I'm sure of



1       what the status is of the 401, but we can certainly have  
2       Ecology provide that information to you.

3               MR. MUDRE:   Okay.   Well, thank you very much.

4               I'd like to ask someone from National Marine  
5       Fisheries Service about the status of Endangered Species Act  
6       consultation, and/or any modified fishway prescriptions for  
7       this project?

8               MS. HARRIS:   Yes, Melanie Harris again, National  
9       Marine Fisheries Service.

10              I believe we're on track both for the Section 18  
11      fishway prescription and the Biological Opinion for this  
12      project.

13              MR. MUDRE:   Okay.   Again the same question for  
14      the Fish and Wildlife Service.   What's the status of the ESA  
15      consultation and any modified fishway prescriptions?

16              MR. TANAKA:   This is Kevin Tanaka, Interior  
17      Solicitor's Office again.

18              As with NMFS, we're on course for getting both  
19      our Section 18s and the BO done on time.

20              MR. MUDRE:   Great.   Thank you.

21              Anyone else in the room in a regional office or  
22      on the phone that has a comment about this project?

23              (No response.)

24              Okay.   That brings us to our final project today.  
25      And our final project today is the Lake Chelan project.

1       It's a 48 megawatt project located on the Chelan River in  
2       Chelan County, Washington. And the applicant is the Chelan  
3       County Public Utility District No. 1.

4               The re-license application was filed in 2002, and  
5       this project is new to the list.

6               We issued our draft Environmental Assessment, EA  
7       for this project, in November 2002. In December of 2002,  
8       the applicant requested that we delay issuance of our final  
9       EA until April 2003 to accommodate ongoing settlement  
10      discussions. We granted that request.

11              In June 2003, we informed the parties that we  
12      would resume preparation of the final EA because the last  
13      settlement progress report indicated that a settlement may  
14      not be forthcoming, due to Endangered Species Act and tribal  
15      concerns.

16              The final EA was issued in October of 2003. Also  
17      in October of 2003, the applicant filed a comprehensive  
18      settlement agreement. In April of 2004, the programmatic  
19      agreement for the protection of cultural resources was  
20      signed. In June 2004, the National Marine Fisheries  
21      Service, NMFS, issued its draft Biological Opinion  
22      concerning listed salmon and steelhead. In October 2005,  
23      NMFS filed its final Biological Opinion.

24              I'm pleased to report that Commission staff is  
25      now preparing the licensing order for this project.

1                   Is there anyone in the audience, on the phone, or  
2                   regional office has any comments, questions concerning this  
3                   project?

4                   (No response.)

5                   MR. KATZ: Mr. Chairman, with that, that wraps up  
6                   the presentations of the individual projects.

7                   CHAIRMAN KELLIHER: Great. I'll just make some  
8                   brief concluding remarks.

9                   First of all I want to thank the Commission Staff  
10                  for organizing the workshop, and I want to thank our sister  
11                  agencies, both federal and state, for participating as well  
12                  as licensees and stakeholders. I think these workshops are  
13                  very helpful, and I've enjoyed them since I got to the  
14                  Commission, and I think we'll continue them. It's a good  
15                  process, and it helps identify issues that are preventing  
16                  the Commission from acting on some of the pending  
17                  proceedings.

18                  I think we'll keep it at projects that are three  
19                  years old or older; I don't think we need to cast the net  
20                  more broadly. Otherwise, we'll get down to a pretty short  
21                  time frame. So let's keep it at three years or older and  
22                  instead focus on pushing down the number in that category.

23                  I just want to reiterate what I said about  
24                  Escondido, with respect to Escondido; that delays do come at  
25                  a price. They really come at a price of foregone benefits,

1 foregone environmental benefits, foregone public benefits in  
2 the form of recreational benefits and other categories; and  
3 so there is actually a cost.

4 So we're dedicated to acting quickly on  
5 proceedings, but sometimes the impediments arise outside of  
6 our reach.

7 So I've enjoyed this one as much as the prior  
8 ones, and look forward to next year. So thank you very  
9 much.

10 MR. CASTENHOLTZ: Just an additional comment or  
11 question on Chelan licensing.

12 This is Joe Castenholtz from the U.S. Forest  
13 Service, Wenatchee National Forest.

14 MR. KATZ: I'm sorry.

15 CHAIRMAN KELLIHER: Why don't we reconvene for a  
16 question?

17 MR. CASTENHOLTZ: I'm sorry, I wasn't quite --

18 CHAIRMAN KELLIHER: Go right ahead.

19 MR. CASTENHOLTZ: The question I have is for FERC  
20 Staff, if there's any estimated timetable on when the new  
21 license would be issued for the Chelan project?

22 MR. KATZ: We can't do that as staff; we are  
23 precluded from talking -- by regulation, from revealing the  
24 nature and timing of Commission actions. So all we can tell  
25 you is that the order is in preparation and the Commission

1       will issue it when it is ready.

2                   MR. CASTENHOLTZ:  Okay, thank you very much.  I  
3       didn't know that that was not procedural.  Thank you.

4                   CHAIRMAN KELLIHER:  And that's a wrap.  Thank you  
5       very much.

6                   (Whereupon, at 1:18 p.m., the workshop  
7       concluded.)

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## 1 CERTIFICATE OF SHORTHAND REPORTER

2 I, Daniel W. Hawkins, shorthand reporter, do  
3 hereby certify that the record of proceedings appearing in  
4 the foregoing pages was taken by me in shorthand and this  
5 transcript typed under my direction; that said transcript is  
6 a true record of the proceedings; that I am neither counsel  
7 for, related to, nor employed by any of the parties to the  
8 action in which these proceedings were held; and, further,  
9 that I am not a relative or employee of any attorney or  
10 counsel retained by the parties hereto, nor financially or  
11 otherwise interested in the outcome of the action.

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Shorthand Reporter

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